

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 13684  
Docket No. 13501  
02-2-99-2-103

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood Railway Carmen Division  
( Transportation Communications International Union**  
**PARTIES TO DISPUTE: (**  
**(CSX Transportation, Inc. (former Chesapeake and Ohio  
( Railway Company, Pere Marquette District)**

**STATEMENT OF CLAIM:**

**“Claim of the Committee of the Union that:**

- 1. That the Carrier violated Rule 57, of our current a (sic) Agreement, when they unjustly denied Carmen assigned Rougemere Train Yard to perform carmen’s work regular assigned to the carmen from January 13, 1998 and continuing until resolved.**
- 2. That accordingly, CSX Transportation, Inc. be ordered to compensate carmen assigned Rougemere Train Yard for a two (2) hour and forty minute call for each offense at the rate of time and one half their respective rate of pay. From January 13, 1998, until resolved, as this is a continuing claim.”**

**FINDINGS:**

**The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:**

**The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.**

**This Division of the Adjustment Board has jurisdiction over the dispute involved herein.**

**Parties to said dispute were given due notice of hearing thereon.**

The Carrier leases three tracks from the Ford Motor Company in Fordson Yard at Dearborn, Michigan, and has joint usage of a fourth track. Fordson Yard is across the mainline from the Carrier's Rougemere Yard. Carmen are regularly assigned at Rougemere Yard.

In this dispute, the Organization claims certain inspection work given to Trainmen on track in Fordson Yard. According to the Organization, that work should have been given to Carmen assigned at the Carrier's Rougemere Yard.

Rule 57 provides, in relevant part:

**"Coupling, Inspection and Testing**

- (a) In yards or terminals where carmen . . . are on duty . . . such inspecting and testing of air brakes and appurtenances on trains as is required by the Carrier . . . shall be performed by the carmen."

\* \* \*

These kinds of disputes are not new. Prior Awards have established conditions for the sustaining of these types of claims. See e.g., Second Division Award 10959:

"... [S]everal conditions must be present to sustain a finding that the work in question is reserved to Carmen. As confirmed by Second Division Awards 5368 and 10021, those conditions are:

1. Carmen are on duty.
2. The train is physically in a departure yard or terminal.
3. The train departs the departure yard or terminal."

The Organization bears the burden to demonstrate a violation of the Agreement. Here, that burden requires the Organization to demonstrate the existence of the three conditions set forth in Award 10959. The Organization cannot meet its burden.

To say the least, the parties' positions on the relationship between Fordson and Rougemere Yards have varied. The record indicates that in another claim involving the wrecking Rule, the parties took the opposite positions from those advanced in this case with the Organization asserting that Fordson Yard "... was not within yard limits" and the Carrier

taking the position that Fordson Yard was a “. . . location inside of yard limits.” We also note that early in the claim handling, the Carrier took the position that there was no lease agreement for Fordson Yard “CSXT no longer leases track in Fordson Yard”, only to later change that position (“[o]ur further investigation of this matter indicates that CSXT continues to lease Tracks 11, 12 and 13 in Fordson Yard, and to have a joint usage arrangement for Track 14. . .”).

Putting those changes of positions aside, the Organization’s present description of Fordson Yard as a “sub-yard” of Rougemere Yard misses the point. As articulated in Award 10959, the Organization must show that “Carmen [were] on duty.” While Award 10959’s conditions might be vague on this point, it is reasonable to interpret those requirements to mean that to prevail in this case, the Organization must show that Carmen were on duty in the adjacent Fordson [as opposed to Rougemere] Yard. With respect to the dates covered by the claim, in this record, the Organization has not met that requirement. There is no showing that Carmen were on duty in Fordson Yard on the dates covered by the claim. On this record (and notwithstanding the ebb and flow of the parties’ changing positions), we therefore cannot say that an assignment of work to Trainmen which was incidental their work violated Rule 57.

We shall therefore deny the claim.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Second Division**

Dated at Chicago, Illinois, this 24th day of April, 2002.